

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9370 of 1998

with

SPECIAL CIVIL APPLICATION No 9371 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SRS ENGINEERING INDUSTRIES

Versus

UNION OF INDIA

Appearance:

MR UDAY JOSHI for M/S TRIVEDI & GUPTA for Petitioner
MR PB MAJMUDAR for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 21/12/98

ORAL COMMON JUDGEMENT

#. Rule. Mr.P.B.Majmudar, learned Senior Standing Counsel for the Central Government appears and waives service of Rule for respondent No.1. In the facts and

circumstances of the case, both these matters are taken up for final hearing today.

#. Both these petitions are filed against the order passed by the Commissioner of Central Excise (Appeals), Ahmedabad in stay applications filed by the petitioner.

#. When the appeals were filed by the petitioner and the stay applications were also moved, a conditional order was passed by the appellate authority directing the petitioner to deposit certain amount within a stipulated time.

#. Various contentions were raised by the learned counsel for the petitioners. However, it would not be appropriate to deal with those contentions in view of the fact that the appeals are pending before the appellate authority. In our opinion, it also cannot be said that by passing the conditional order directing the petitioners to deposit an amount as specified in the order granting application for stay, any illegality has been committed by the appellate authority. We, therefore, do not see any reason to interfere with any of the orders.

#. The learned counsel for the petitioners lastly submitted that stipulate period is over and the petitioners could not deposit the amount within the said period. In the facts and circumstances of the case, it would be in the interest of justice if the petitioners are granted time to pay amount on or before January 30, 1999. If the amount will be paid within that period the appeals will be taken up for final hearing. If the amount will not be paid, then this order will not operate. It is also stated by the learned counsel for the petitioner that they have not received any intimation regarding disposal of the appeals by them and that the appeals are pending. If it is so, the appellate authority will not dismiss the appeal for non-payment of amount as per the order passed in the said application. It is also clarified that the appeals will be taken up for hearing by the appellate authority only after the payment is made as per the direction issued by the appellate authority and extended by us.

#.. In the result, both the petitions are partly allowed and the rule is made absolute to the above extent. In the facts and circumstances of the case, no order as to costs.

(C.K.Thakkar,J.)

Date : 21-12-1998 (A.L.Dave, J.)

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